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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

ROY LAGOMARSINO,

Plaintiff and Appellant,

v.

GARY DUMONT et al.,

Defendants and Respondents.

C062027

(Super. Ct. No.
PC20080287)

Plaintiff appeals from an order of the trial court sustaining defendants' demurrers to the complaint without leave to amend. Such an order is not appealable; the appeal must be taken from the ensuing judgment of dismissal. (*Setliff v. E.I. DuPont de Nemours & Co.* (1995) 32 Cal.App.4th 1525, 1533.) However, we have discretion to deem an order sustaining a demurrer as incorporating a judgment of dismissal and to hear the appeal. (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1019.) We do so here.

Plaintiff's underlying claims stem from defendants' refusal to allow him to assume his deceased father's membership in a

hunting club or to pay him the reasonable value of such membership. The trial court concluded plaintiff's claims are barred by the applicable statute of limitations, because plaintiff waited too long after his membership interest was challenged by defendants to file suit. Plaintiff contends he could not have pursued the matter until his father's probate proceedings were completed and plaintiff was awarded his father's interest in the hunting club, which occurred less than a year before plaintiff filed suit. We agree with plaintiff and reverse.

FACTS AND PROCEEDINGS

Since this appeal follows an order sustaining a demurrer, we treat as true all properly pleaded material facts of the operative pleading. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The operative pleading in this instance is plaintiff's amended complaint, from which we draw the following facts.

Plaintiff is Roy Lagomarsino. His father, Joseph Roy Lagomarsino, was one of seven founding members of The International Hunting Club, Inc. (IHC), a nonprofit mutual benefit corporation that owned over 600 acres of real property in Napa Valley. Another founding member of IHC was Joseph Dumont, the father of defendants Gary and Richard Dumont (the Dumonts).

Joseph Dumont's "financial interest" in IHC passed to his wife, Margaret Dumont. In April 1998, the Dumonts succeeded to Margaret Dumont's "financial interest" in IHC. In August 1998,

plaintiff's father filed a lawsuit in Solano County, California, against IHC, the Dumonts and others (the Solano County action). He alleged, among other things, that appropriate procedures had not been followed in connection with the transfer of membership interests held by two other members, Susanne and John Wysocki (the Wysockis), to the Dumonts. He sought an order setting aside the membership transfers, enjoining further misconduct and dissolving IHC.

Plaintiff's father died on August 24, 2000, while the Solano County action was still pending. On December 4, 2000, plaintiff was appointed executor of his father's estate. Plaintiff thereafter attempted to continue pursuit of the Solano County action in place of his father.

The defendants in the Solano County action moved for summary judgment and, on April 18, 2001, the trial court granted the motion. The court concluded the complaint alleged matters relating to the internal affairs of IHC and, because plaintiff was not a member of IHC, he had no standing to pursue those claims. In its order, the court further noted: Plaintiff "is not without recourse. He can seek membership transfer by applying for it with [IHC]. Should the corporation deny that application without reasonable cause, or fail to act on that application within a reasonable time, he would then have standing to challenge those actions or inactions."

Plaintiff appealed, and the Court of Appeal, First Appellate District, affirmed. (*Lagomarsino v. International Hunting Club, Inc.* (Mar. 20, 2002, A095833) [nonpub. opn.])

That appellate court agreed with the trial court that because plaintiff is not a member of IHC, he has no standing to challenge the internal affairs of the company. (*Id.* at p. 5.) Like the trial court, the Court of Appeal further indicated plaintiff is not without recourse because he can apply to IHC for membership and, if denied, challenge such denial. (*Id.* at p. 8.)

On April 16, 2003, the probate court entered an order of final distribution in the estate proceeding of plaintiff's father. However, due to an error, the deceased's interest in IHC was not included in that order. Nearly four years later, on March 19, 2007, plaintiff filed a petition to amend the order for final distribution to include the IHC interest. On April 5, 2007, the probate court signed an order amending the order for final distribution to include two shares in IHC previously held by plaintiff's father. By virtue of this modification, plaintiff became the owner of his father's interest in IHC, to the extent such interest survived Joseph Lagomarsino's death.

On April 24, 2007, plaintiff's counsel wrote to IHC requesting that plaintiff be recognized as a member of IHC. On May 9, 2007, defendants' counsel responded. After first explaining that defendants considered plaintiff's request as one seeking consideration as a candidate for membership, defendants' counsel stated the IHC board had met and concluded plaintiff "is not a suitable candidate for membership" and denied the request. Thereafter, on September 5, 2007, plaintiff requested reconsideration and further requested that, in lieu of

membership, he be paid \$400,000 as the fair market value of his father's two shares in IHC. Defendants failed to respond to this request.

On May 8, 2008, plaintiff filed suit against the Dumonts and IHC. A first amended complaint was filed on September 23, 2008. It contains 12 causes of action: (1) abuse of authority in failing to approve plaintiff for membership; (2) dissolution of IHC; (3) accounting and appointment of a receiver; (4) partition of IHC; (5) breach of fiduciary duty; (6) breach of the covenant of good faith and fair dealing; (7) restitution based on unjust enrichment; (8) interference with the right to inherit; (9) conversion; (10) civil conspiracy; (11) injunction; and (12) constructive trust.

Defendants demurred to the amended complaint, asserting all of plaintiff's claims are barred by lack of standing and the statute of limitations.

The trial court sustained the demurrers on the basis of the statute of limitations. The court specifically rejected plaintiff's argument that he had no standing to seek membership in IHC until final settlement of his father's probate matter in 2007. According to the court, "any determination of the Probate Court regarding Plaintiff's father's estate, of Plaintiff's status as his father's heir, is irrelevant to the issue of whether Plaintiff has a legal right to an interest in IHC." The court explained the statute of limitations began to run when plaintiff had knowledge that his right to an interest in IHC was being challenged by defendants which, according to the court,

occurred in 2000. The court further explained plaintiff could have applied for membership after resolution of the Solano County case but failed to do so.

DISCUSSION

"On appeal from a dismissal after an order sustaining a demurrer, we review the order de novo, exercising our independent judgment about whether the complaint states a cause of action as a matter of law." (*Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1501.) "'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff. [Citation.]" (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.)

In its tentative ruling, which the court ultimately adopted as the basis for sustaining defendants' demurrers, the trial

court explained: "[P]laintiff's legal right to an interest in the IHC is a necessary element to all causes of action, either because such interest is required for standing or because such interest is an essential element of the cause of action. Thus, the threshold issue is whether plaintiff's right to an interest in the IHC is barred by the statute of limitations. The statute of limitations or doctrine of laches in an action by a stockholder to establish his interest in a corporation starts to run when the stockholder has knowledge that his rights are denied or status controverted by the corporation. (*Maguire v. Hibernia Savings & Loan Soc.* (1944) 23 Cal.2d 719, 735.) In the instant case, plaintiff had knowledge that his status was opposed by the corporation when he filed his motion to substitute in as plaintiff in his father's lawsuit in December 2000, over seven years ago. The four-year statute of limitations period bars the instant complaint. 'An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued.' (Code of Civil Procedure, § 343.)

"Also, more than four years passed from the time plaintiff was able to apply for membership in IHC--2001 after the Solano County Superior Court judgment and 2002 after the appellate court's ruling--and the date he actually did apply in 2007. Accordingly, all of plaintiff's causes of action, which are based on plaintiff's determination of a right to an interest in the IHC, are barred by the statute of limitations."

The trial court thus found two alternate bases for concluding the statute of limitations had run on plaintiff's claims: (1) plaintiff filed suit more than four years after he became aware defendants were challenging his interest in IHC; and (2) plaintiff sought membership in IHC more than four years after the Solano County court informed him he needed to apply for membership. As we shall explain, neither basis withstands scrutiny.

First, as to plaintiff's knowledge that his status as a member of IHC was being challenged, the trial court cited *Maguire v. Hibernia Savings & Loan Soc.*, *supra*, 23 Cal.2d 719. In *Maguire*, the plaintiffs were assignees of memberships in a savings and loan society and brought a declaratory relief action against the society to determine their membership rights. The trial court concluded the claim was barred by the statute of limitations, but the Supreme Court reversed. After first recognizing the general rule that the cause of action in question accrued when the plaintiffs had notice that their rights were being controverted by the defendant, the high court concluded the face of the complaint did not reveal any prior invasion of the plaintiffs' rights in the society and, hence, any notice that the plaintiffs' rights were being challenged. (*Id.* at pp. 735-737.)

In the present matter, the trial court reasoned that plaintiff was aware in 2000 that defendants were challenging his interest in IHC. When plaintiff sought to step into his deceased father's shoes and pursue the prior litigation,

defendants asserted plaintiff lacked standing because he was not a member of IHC. Both the trial court and the Court of Appeal agreed.

But, at the time, plaintiff was not acting on his own behalf but as the legal representative of his father's estate. When defendants challenged plaintiff's right to pursue the action, they were challenging his right to do so as the estate representative, not as a legatee of his father's interest in IHC. It was not until 2007, after plaintiff was awarded his father's interest in IHC in the probate proceeding, that he had a right to seek membership in his own right. Plaintiff's claim arose when defendant's denied him membership or financial compensation in his own right.

As for plaintiff's failure to seek membership until 2007, despite suggestions by the trial and appellate courts in the Solano County matter to do so many years earlier, here too any such effort would have been made by plaintiff as the representative of his father's estate, not as a legatee. Plaintiff had no right to seek membership or payment for his father's interest in IHC in his own right, any more than any other potential legatee, until rights in the IHC interest were resolved in the probate proceeding.

Defendants argue membership interests in IHC are governed by the bylaws of the organization rather than the laws of inheritance. Hence, they argue, the fact the probate court did not distribute the IHC interest to plaintiff until 2007 is irrelevant.

This argument misses the point. First, while the courts in the Solano County action made reference to the bylaws of IHC, those bylaws are not incorporated into the amended complaint in this action and therefore are not before us. Moreover, while it may be true a membership interest in IHC cannot be inherited, there is nothing on the face of the complaint to refute plaintiff's allegation that he inherited *the right to seek such a membership* or to benefit from the sale of his father's IHC interest to another. Until the order of distribution was amended in 2007, it could not be determined which of plaintiff's father's heirs had a right to pursue either option.

Defendants assert plaintiff waited too long to seek amendment of the order of distribution from the probate court. However, defendants provide no further argument or legal support for this assertion. Where a point is raised in an appellate brief without argument or legal support, "it is deemed to be without foundation and requires no discussion by the reviewing court." (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647.)

Defendants next argue that even if the entire lawsuit is not barred by the statute of limitations, most of plaintiff's individual claims are so barred. However, this argument is premised on the same misconception that plaintiff's interest in IHC had been controverted by defendants before that interest was awarded to him by the probate court.

Defendants argue plaintiff has no standing to pursue the first (abuse of authority), second (dissolution), third

(accounting), fourth (partition), fifth (breach of fiduciary duty), six (breach of the covenant of good faith), eleventh (injunction) and twelfth (constructive trust) causes of action, because those claims "either challenge the IHC's internal affairs, enforce its bylaws or seek its involuntary dissolution." Defendants argue such claims can be pursued only by a member of IHC and plaintiff acknowledges he is not a member.

However, beyond merely asserting that the foregoing claims involve internal IHC affairs, defendants provide no corresponding legal analysis. The first cause of action alleges the Dumonts breached IHC's bylaws by failing either to approve plaintiff's membership or pay him the fair market value of his interest in IHC. Defendants fail to explain how one must already be a member of IHC to pursue such a claim. In the second cause of action, plaintiff alleges he is the legal owner of two of the six shares of IHC and defendants have refused to acknowledge plaintiff's beneficial interest in IHC, either by making him a member or paying him the fair market value of his interest. Plaintiff further alleges that, in order to protect his interests in IHC, it is necessary for the court to "supervise the winding up of IHC." Again, defendants fail to explain why plaintiff must be a member of IHC in order to have standing to assert such a claim.

As noted above, where a point is raised in an appellate brief without argument or legal support, it requires no consideration by the reviewing court. (*Atchley v. City of*

Fresno, supra, 151 Cal.App.3d at p. 647.) We consider only those arguments sufficiently developed to be cognizable. (*People v. Freeman* (1994) 8 Cal.4th 450, 482, fn. 2.) An argument raised but not supported by reasoned argument and citations to authority is deemed forfeited. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

Defendants argue the seventh (restitution) and ninth (conversion) causes of action fail to state claims upon which relief can be granted. They argue a prerequisite to such claims is that plaintiff have the right to an interest in IHC which the defendants appropriated. They further argue plaintiff's claim to an interest in IHC is barred by the statute of limitations and res judicata.

These arguments confuse membership in IHC with beneficial interest in the club. Plaintiff alleges he has a beneficial interest in IHC which defendants have appropriated for their own benefit. It is this beneficial interest which plaintiff is seeking to have recognized, either by awarding him membership in IHC or by paying him the fair market value of the beneficial interest.

Defendants contend the eighth cause of action (interference with the right to inherit) is barred by virtue of the fact such a tort is not recognized in California and, in any event, plaintiff had no right to inherit his father's interest in IHC. Again, however, defendants confuse the right to inherit an interest in IHC with the right to inherit a membership. It is undisputed plaintiff had no absolute right to inherit a

membership in IHC. However, that does not necessarily mean, as defendants assert, that if he sought a membership and it was denied, his interest in IHC evaporated.

As for whether California recognizes a cause of action for interference with the right to inherit, defendants cite *Hagen v. Hickenbottom* (1995) 41 Cal.App.4th 168, 173, where the court noted such a tort has not previously been recognized by any court in this state. However, by the same token, such tort has not been rejected either. In *Munn v. Briggs* (2010) 185 Cal.App.4th 578, the court cited section 774B of the Restatement Second of Torts, which provides: "'One who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to the other for loss of the inheritance or gift.'" (*Munn*, at p. 585.) The court also explained that application of the tort in other states has turned on whether the aggrieved party has an adequate remedy in the probate court. (*Id.* at pp. 585-587.) In *Munn*, the court ultimately concluded that because the plaintiff had an adequate remedy in probate, there was no need to recognize the tort of interference with the right to inherit. (*Id.* at p. 587.)

In the present matter, defendants provide no argument or citations to authority as to why we should not recognize the tort under the circumstances presented here. The point is therefore forfeited. (*Badie v. Bank of America, supra*, 67 Cal.App.4th at pp. 784-785.)

Finally, defendants contend the tenth cause of action (civil conspiracy) fails, because plaintiff has not alleged any wrong in which defendants could have conspired. However, since we reject defendants' challenges to the individual causes of action, we reject this argument as well.

DISPOSITION

The judgment (order) sustaining defendants' demurrers to the amended complaint is reversed and the matter is remanded to the trial court for entry of a new order overruling the demurrers. Plaintiff is awarded his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

HULL, J.

We concur:

NICHOLSON, Acting P. J.

ROBIE, J.